IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2783 OF 2006

Shalimar Paints Limited ..Petitioner.

Vs.

Depe Global Shipping Agencies Private Ltd. ..Respondent.

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Ms. Ranjana Parikh for the Petitioner.

Mr. Haresh Jagtiani, Senior Advocate with Mr. Yashpal M. Jain, Mr. Amit J. Jaisinghani i/b Haresh Jagtiani & Associates for the Respondent.

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CORAM: DR. D.Y. CHANDRACHUD, J.

11th July, 2006.

P.C. :

A decree for eviction has been passed in a suit instituted under Section 41 of the Presidency Small Causes Courts Act, 1882. The decree has been confirmed in appeal by the Appellate Bench of the Small Causes Court. The Petitioner is not a protected tenant under the Maharashtra Rent Control Act, 1999 by virtue of the provisions of Section 3(1)(b). The paid up capital of the Petitioner is admittedly in excess of Rs.1 Crore.

2. The submission which has been urged at the hearing of

these proceedings is that Section 3(1)(b) inter alia provides that the Act shall not apply to any premises let or sublet to certain categories of tenants. Hence, it was urged that it was necessary for the Respondent to prove that there existed a landlord – tenant relationship. On the other hand, according to the learned counsel, the Respondent instituted a suit on the basis that the Petitioner was a licensee. Consequently, the submission is that on the basis on which the trial Court was moved, on the foundation of a licence agreement, the suit itself was liable to fail.

3. At the outset it would be necessary to note that the notice of termination dated 19th October, 2001 specifically proceeded on the basis that the Petitioner was claiming protection as a deemed monthly tenant / protected licensee by virtue of the amendment brought out in 1973 to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The notice of termination specifies in paragraph 6 that one month's clear notice was being issued for the termination of the tenancy. Thereafter in paragraph 5 of the plaint there is a clear averment that while the Defendants might have been protected as deemed tenants/ licensees under the Rent Control Act, 1947, this protection was no longer available

under the Maharashtra Rent Control Act, 1999 more specifically in view of the provisions in Section 3(1)(b). In paragraph 6 of the plaint there is the following averment :

> "The Plaintiffs submit that the Defendants tenancy has been duly terminated by the said notices dated 23rd July 2001 and 19th October 2001 respectively. After termination of their deemed tenancy the Defendants are in unlawful possession of the suit premises and that the Defendants are bound and liable to vacate and hand over the vacant and peaceful possession of the suit premises to the Plaintiff in terms of the aforesaid notice."

In the written statement the Petitioner has also proceeded on the basis that there was a relationship of landlord and tenant. This is more than evident from paragraph 15 of the written statement which is to the following effect :

> "With reference to paragraph 4 of the Plaint, this Defendants say and submit that the license as described could never have been terminated by efflux of time by February 1994 as this Defendants are in possession of the suit premises for more than 25 years and the Defendants are deemed tenants u/s. 15A of the Old Rent Act as they were in possession of the suit premises under valid and subsisting license dated 1.2.1973 and hence the license coming to an end in 1974 does not arise and this Defendants are deemed tenants of the suit premises in their occupation."

In these circumstances it is evident that both the parties proceeded on the basis there existed a relationship of landlord and tenant but

that by virtue of the provisions of Section 3(1)(b) of the Maharashtra Rent Control Act, 1999 the Petitioner was not entitled to protection since the paid up capital was in excess of Rs. 1 Crore. In these circumstances, there is no merit in the submission which has been urged on behalf of the Petitioner that the suit itself was liable to fail on the ground of want of adequate pleadings of jurisdictional facts. There is no merit in the Petition. The Petition is dismissed. However, in order to enable the Petitioner to have recourse to its remedies against this judgment and order, there shall be a direction to the effect that the decree for eviction shall not be executed for a period of six weeks from today subject to the filing of the usual undertaking within a period of two weeks from today.